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February 9, 2004

**By Courier**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Ave., NE  
Suite 110  
Washington, DC 20002

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FEB - 9 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

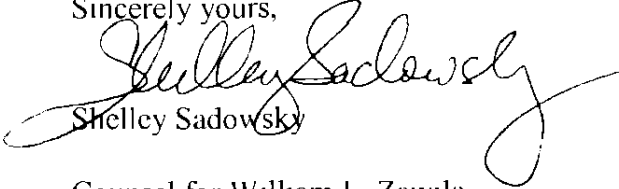
Re **EB Docket No. 03-152**  
**William L. Zawila, et al.**

Dear Madam Secretary:

Submitted herewith, on behalf of William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H L. Charles d/b/a Ford City Broadcasting and Linda Ware d/b/a Lindsay Broadcasting, are an original and six copies of a Joint Petition for Extraordinary Relief for filing in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely yours,



Shelley Sadowsky

Counsel for William L. Zawila,  
Avenal Educational Services, Inc.,  
Central Valley Educational Services, Inc.,  
H L. Charles d/b/a Ford City Broadcasting and  
Linda Ware d/b/a Lindsay Broadcasting

No. of Copies rec'd 076  
List A B C D E

cc The Honorable Arthur Steinberg (via hand delivery)  
James Shook, Esquire (via hand delivery)  
Harry Martin, Esquire (via First Class Mail)

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEB - 9 2004

EB Docket No. 03-152

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
WILLIAM L. ZAWILA	)	Facility ID No. 72672
Permittee of FM Station KNKS,	)	
Coalinga, California	)	
	)	
AVENAL EDUCATIONAL	)	Facility ID No. 3365
SERVICES, INC.	)	
Permittee of FM Station KAAX,	)	
Avenal, California	)	
	)	
CENTRAL VALLEY EDUCATIONAL	)	Facility ID No. 9993
SERVICES, INC.	)	
Permittee of FM Station KAJR,	)	
Firebaugh, California	)	
	)	
H.L. CHARLES D/B/A FORD CITY	)	Facility ID No. 22030
BROADCASTING	)	
Permittee of FM Station KZPE,	)	
Ford City, California	)	
	)	
LINDA WARE D/B/A LINDSAY	)	Facility ID No. 37725
BROADCASTING	)	
Licensee of FM Station KZPO,	)	
Lindsay, California	)	
	)	

TO: The Honorable Arthur I. Steinberg  
Administrative Law Judge

**JOINT PETITION FOR EXTRAORDINARY RELIEF**

William L. Zawila ("Zawila"), Avenal Educational Services, Inc. ("Avenal"), Central Valley Educational Services, Inc. ("Central"), H.L. Charles d/b/a Ford City Broadcasting ("Ford City") and Linda Ware d/b/a Lindsay Broadcasting ("Lindsay", and together with Zawila, Avenal, Central and Ford City, the "Parties"), by their undersigned counsel, hereby jointly request a further stay of this proceeding while a FCC Form 314 application for assignment of

each Parties' construction permit or license, as the case may be (collectively, the "Authorizations") for their respective above-captioned radio station (collectively, the "Stations"), is processed by the Media Bureau pursuant to the Commission's Minority Distress Sale Policy. *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978); *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978) In support hereof, the following is shown:

1. In rulings made at the September 9, 2003 prehearing conference in this proceeding, as memorialized by Order, FCC 03M-39, released September 12, 2003, the Presiding Judge stayed this proceeding through February 9, 2004, to permit the Parties to pursue the sale of their stations and assignment of their Authorizations pursuant to the Minority Distress Sale Policy. More specifically, the Parties were given until February 9, 2004, to file a Petition for Extraordinary Relief, assuming they had by then reached agreements for the sale of their stations in accordance with the Minority Distress Sale Policy.

2. The Parties hereby report that collectively, they have reached an agreement with Lazer Broadcasting Corporation ("Lazer") providing for the sale of their five Stations and Authorizations to Lazer conditioned upon the prior consent of the Commission. An unexecuted copy of the definitive Asset Purchase Agreement among the Parties and Lazer is attached as **Exhibit A** hereto, and an executed copy will be filed with each of five Form 314 applications for assignment of the Authorizations, which applications the Parties expect to file within the next two business days. As demonstrated below, the proposed transactions among the Parties and Lazer meet the requirements of the Commission's Minority Distress Sale Policy.

3. Attached hereto at **Exhibit B** is a declaration of Alfredo Plascencia, Lazer's sole shareholder and president, providing information regarding Lazer's status as a minority owned corporation. As reflected in Mr. Plascencia's declaration, not only is Lazer owned and

controlled by Mr Pascencia, a Mexican American, but Lazer also is the licensee of numerous radio stations in California, and thus, its qualifications to be a broadcast licensee have been passed upon by the Commission on numerous occasions. Thus, the proposed transactions for the sale of the Stations to Lazer meet the Minority Distress Sale Policy's requirement that the buyer be minority-owned or controlled

4. Turning to the determination of the purchase price for each Station, the fair market value ("FMV") of the Stations has been determined by two professional appraisers. The Parties retained H.B. LaRue of H.B. La Rue Media Brokers ("LaRue"), Beverly Hills, California, to appraise the Stations on their behalf, and Lazer retained Andrew McClure of The Exline Co. ("Exline"), San Rafael, California, to appraise the Stations on its behalf. The independent appraisals of LaRue and Exline are attached hereto as **Exhibits C and D**, respectively. The appraisals were prepared in conformance with Commission precedent. See *Northland Television, Inc* , 72 FCC 2d 51, 56 (1979), *Grayson Enterprises, Inc.*, 77 FCC 2d 156 (1980) (appraisals must be based on comparables, market conditions and other relevant factors; sources for data must be provided)

5. The chart below provides (1) the FMV of each Station as determined by each appraiser, (2) the average of the two appraisals for each Station, (3) 75% of the average of the two appraisals, and (4) the purchase price for each of the Stations as agreed upon by the Parties (each for its particular Station) and Lazer

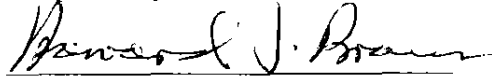
Station	Fair Market Value (FMV)		Average of FMV Figures	75% of FMV Average	Purchase Price
	LaRue	Exline			
KNGS(FM) Coalinga, CA	\$460,000	\$440,000	\$450,000	\$337,500	\$300,000
KAAX(FM) Avenal, CA	\$110,000	\$ 90,000	\$100,000	\$ 75,000	\$ 50,000
KAJP(FM) Firebaugh, CA	\$ 620,000	\$ 590,000	\$ 605,000	\$ 453,750	\$ 450,000
KZPE(FM) Ford City, CA	\$1,000,000	\$980,000	\$990,000	\$742,500	\$700,000
KZPO(FM) Lindsay, CA	\$2,550,000	\$2,450,000	\$2,500,000	\$1,875,000	\$1,875,000

As indicated in the chart, no purchase price for any Station exceeds 75% of the average of the two appraisers' FMV figures. Accordingly, the purchase price for each Station complies with the requirements of the Minority Distress Sale Policy with respect to the permissible sale price. *Lee Broadcasting Corp.* 47 RR 2d 316 (1980).

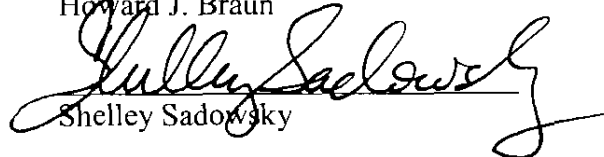
6. In sum, each of the Parties presents here, and will present further in its Form 314 assignment application, a proposed assignment and sale of its Authorization and related Station assets that conforms to all requirements of the Minority Distress Sale Policy, i e, the sales are proposed in advance of the date set for commencement of the hearing; the buyer is a *bona fide* minority-owned entity; and, the purchase price for each Station is no more than 75% of its FMV as determined by independent, professional appraisals. Accordingly, a further stay of this proceeding to allow the Media Bureau to process the assignment applications pursuant to the Minority Distress Sale Policy is justified.

WHEREFORE, for reasons set forth above, the Parties respectfully request extraordinary relief in the form of a further stay of this proceeding while the Media Bureau processes the applications for assignment of licenses from the Parties to Lazer pursuant to the Minority Distress Sale Policy.

Respectfully submitted,



Howard J. Braun



Katten Muchin Zavis Rosenman  
1025 Thomas Jefferson St., NW, Suite 700  
Washington, DC 20007  
Tel. 202-625-3500

Counsel for William L. Zawila, Avenal  
Educational Services, Inc., Central Valley  
Educational Services, Inc., H.L. Charles d/b/a  
Ford City Broadcasting, Linda Ware d/b/a Lindsay  
Broadcasting

February 9, 2004

EXHIBIT A

## **ASSET PURCHASE AGREEMENT**

ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of February \_\_, 2004, by and among William L. Zawila, an individual ("Zawila" or "Seller"), Avenal Educational Services, Inc., a California corporation ("Avenal" or "Seller"), Central Valley Educational Services, Inc., a California corporation ("Central" or "Seller"), H.L. Charles (an individual) d/b/a Ford City Broadcasting ("Ford City" or "Seller"), and Linda Ware d/b/a Lindsay Broadcasting ("Lindsay" or "Seller" and, collectively with Zawila, Avenal, Central and Ford City, the "Sellers"), and Lazer Broadcasting Corporation, a California corporation ("Buyer").

### **RECITALS**

A. Zawila is the holder of the construction permit issued by the Federal Communications Commission ("FCC") for FM radio station KNGS, Coalinga, California ("KNGS");

B. Avenal is the holder of the construction permit issued by the FCC for FM radio station KAAX, Avenal California ("KAAX"); and

C. Central is the holder of the construction permit issued by the FCC for FM radio station KAJP, Firebaugh, California ("KAJP"); and

D. Ford City is the holder of the construction permit issued by the FCC for FM radio station KZPE, Ford City, California ("KZPE"); and

E. Lindsay is the holder of the license issued by the FCC for FM radio station KZPO, Lindsay, California ("KZPO" and, together with KNGS, KAAX, KAJP and KZPE, the "Stations"); and

F. Sellers wish to assign their respective FCC authorizations identified in Recitals A through E (collectively, the "FCC Authorizations") and transfer substantially all related assets of their respective Stations to Buyer, and Buyer wishes to acquire the FCC Authorizations and related assets of the Stations, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants contained herein, the parties, intending to be bound legally, agree as follows:

### **Section 1** **Definitions**

Unless otherwise stated in this Agreement, the following terms have the following meanings

1.1 **Closing Date** has the meaning specified in Section 3 hereof.

1.2 **Communications Act** means the Communications Act of 1934, as amended.



1.3 **Exhibits and Schedules** refers to those Exhibits and Schedules attached to this Agreement

1.4 **FCC** has the meaning specified in recital paragraph A above.

1.5 **FCC Applications** shall mean the FCC Form 314 applications that Sellers and Buyer must file with the FCC requesting its consent to the assignment of the FCC Authorizations

1.6 **FCC Authorizations** has the meaning specified in recital paragraph F above.

1.7 **FCC Consent** means the action of the FCC staff granting its consent to the assignment of the FCC Authorizations as contemplated by this Agreement.

1.8 **Final Order** means a written action or order issued by the FCC granting consent to the assignment of the FCC Authorizations to Buyer and (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been filed for administrative or judicial review, reconsideration, appeal or stay and the periods provided by statute or FCC regulations for filing any such requests and for the FCC to set aside the action on its own motion have expired, or (ii) in the event of review, reconsideration or appeal, the FCC upholds the action and the period provided by statute or FCC regulations for further review, reconsideration or appeal has expired.

1.9 **Intangible Property** has the meaning specified in Section 2.1(d) hereof.

1.10 **Intellectual Property** has the meaning specified in Section 2.1(d) hereof.

1.11 **Leased Real Property** means all real property interests and all buildings, structures, improvements and fixtures of every nature located thereon, and interests therein, leased by any Seller pursuant to an oral lease, and used or useful in the conduct of the business and operations of any of the Stations, together with any additions thereto between the date hereof and the Closing Date;

1.12 **Purchase Prices** has the meanings specified in Section 2.5 and Schedule 2.5.

1.13 **Station Assets** has the meaning specified in the last paragraph of Section 2.1 hereof

1.14 **Stations** has the meaning specified in the recital E above.

1.15 **Tangible Personal Property** means all equipment, machinery, tools, vehicles, furniture, leasehold improvements, office equipment, inventory, spare parts, and other personal property which are used or held for use in the business or operation of the Stations and which are listed on **Schedule 2.1(b)**, together with any additions thereto between the date hereof and the Closing Date, and less any retirements or dispositions thereof arising in the ordinary course of business between the date hereof and the Closing date.

1.16 **Third Party Claims** has the meaning specified in Section 20.3 hereof.

## **Section 2**

### **Purchase of Assets**

**2.1 Assets to be Sold.** On the Closing Date (as hereinafter defined), each Seller shall assign and sell to Buyer, and Buyer shall assume and purchase from each Seller:

(a) its FCC Authorization identified in one of the recital paragraphs A through E, with the result that Buyer will assume and purchase all FCC Authorizations identified in Schedule 2.1(a),

(b) that Seller's Tangible Personal Property;

(c) all books, files (including, without limitation, public files), records, and logs relating to the conduct of the business and operations of its Station, except for any Seller's financial records with respect to its Station;

(d) all rights of Seller to the Leased Real Property that exist under oral leases with the owners of the Leased Real Property, to the extent that such rights may be assigned and transferred; and

(e) all other assets, whether tangible or intangible, not specifically mentioned above, which are owned by Seller and used or held for use in the business or operations of Seller's Station, to the extent assignable, including, without limitation, all rights and interests of Seller under manufacturer's, service and other warranties applicable to the assets being sold hereunder, all of Seller's right, title and interest in and to the Station's call signs, slogans, logos, trademarks, trade names, copyrights, computer software and similar materials and rights listed or described in **Schedule 2.1(e)** (the "Intellectual Property"), and all of Seller's right, title and interest in and to the goodwill and other intangible assets arising from the business of the Stations, including but not limited to all customer lists, trade secrets, and sales, operating and business plans (the "Intangible Property").

The assets to be transferred by each Seller to Buyer hereunder are collectively referred to herein as the "Station Assets". The Station Assets shall be transferred to Buyer free and clear of all debts, liens, security interests, mortgages, trusts, claims or other liabilities or encumbrances whatsoever, except as specifically permitted by this Agreement.

**2.2 Excluded Assets.** Notwithstanding anything in Section 2.1 hereof to the contrary, the Station Assets shall not include (i) cash, bank deposits, securities, accounts receivable, or cash deposits to secure contract obligations (such as utility deposits); (ii) prepaid items not adjustable under Section 10 hereof; (iii) insurance proceeds except as otherwise provided in Section 15 with respect to losses suffered after the date hereof; (iv) Tangible Personal Property other than that specifically described on Schedule 2.1(b) hereto, together with any replacements thereof and additions thereto made between the date hereof and the Closing Date; (v) any Seller's financial records and such other books and records as pertain to the organization, existence or capitalization of any of the Sellers.

**2.3 Non-Assumption of Liabilities.** Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions

contemplated hereby any liabilities, obligations or commitments of Seller of any nature whatsoever except (i) liabilities accruing after the Closing Date under the Assumed Contracts and (ii) prorated items that are to be paid by Buyer after Closing.

**2.4 Letter of Credit as Good Faith Deposit.** Within ten (10) business days of the date hereof, Buyer shall deliver to H.B. LaRue Media Brokers ("Escrow Agent") an irrevocable letter of credit in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), which letter of credit shall held in escrow by Escrow Agent pursuant to the terms of the Escrow Agreement at **Exhibit A.**

**2.5 Purchase Prices.** The purchase price to be paid by Buyer for each Station's FCC Authorization and related Station Assets (the "Purchase Price") shall be as set forth on Schedule 2 5.

**2.6 Payment of Purchase Prices.** At Closing, Buyer shall pay Sellers the Purchase Prices listed in Schedule 2 5 for Sellers' FCC Authorizations and related Station Assets. Such payment shall be by wire transfer of U.S. funds to a bank account designated by each Seller in writing no less than two (2) business days prior to Closing.

**2.7 Allocation.** Each Purchase Price shall be allocated to the related Station Assets in accordance with an allocation schedule prepared pursuant to Section 1060 of the Internal Revenue Code of 1986, as amended, and mutually agreed upon by Sellers and Buyer. The consent of Sellers to a reasonable allocation schedule proposed by Buyer shall not be unreasonably withheld. Sellers and Buyer shall use such allocation for tax (including without limitation preparation of IRS Form 8594), accounting, and all other purposes. If any of the Sellers and Buyer have not agreed upon the allocation prior to the Closing Date, the Closing shall take place as scheduled and any dispute shall be resolved by a qualified media appraiser mutually acceptable to such Sellers and Buyer, whose decision shall be final and whose fees and expenses shall be paid by Buyer. If the allocation must be determined by a media appraiser, Seller and Buyer agree to cooperate in good faith so that such appraisal may be completed as expeditiously as practicable.

### **Section 3** **Date, Time and Place of Closing**

The Closing of this Agreement shall take place at the offices of Katten Muchin Zavis Rosenman, 1025 Thomas Jefferson St., NW, Washington, D.C., at 10:00 a.m. (Eastern time) within ten (10) business days after the FCC Consent becomes a Final Order (the "Closing Date"), or at such other time and place as the parties may mutually agree.

### **Section 4** **Sellers' Representations and Warranties**

Each of the Sellers represents and warrants to Buyer as follows:

**4.1 Authorization and Binding Obligation.** Seller has the power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller have been authorized by all necessary

action on its part. This Agreement has been duly signed and delivered by Seller and constitutes Seller's valid and binding obligation enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**4.2 Absence of Conflicting Agreements.** Except for the required consent of the FCC, Seller's execution, delivery and performance of this Agreement (a) does not require the consent of any third party; (b) to the best of Seller's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; (c) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under any agreement, instrument, trust instrument or permit, which individually or in the aggregate are material to the transactions contemplated hereby; and (d) will not result in the creation of any lien, charge or encumbrance on any of the Station Assets.

**4.3 Litigation.** Other than the pending license/permit revocation proceeding before the FCC (EB Docket No. 03-152), there is no litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller in any federal, state or local court, or before any administrative agency, which might have a material adverse effect upon the business, property, assets or condition (financial or otherwise) of the Station, or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

**4.4 No Successor Liabilities.** Seller has no knowledge of any circumstances, conditions, events or arrangements which may hereafter give rise to any liabilities on the part of any successor to the business of Seller in connection with the Station, except in the ordinary course of business.

**4.5 FCC Authorizations.** Schedule 2.1(a) lists each FCC Authorization to be assigned to Buyer by each Seller and the current operational status of each Station. Except as set forth in Schedule 4.5, each Seller is the authorized holder of an FCC Authorization. A revocation proceeding (EB Docket No. 03-152) pertaining to each of the FCC Authorizations is currently pending before the FCC.

**4.6 Environmental Matters.** Seller has no knowledge of any claim or investigation by any federal, state or municipal agency regarding compliance with environmental laws or regulations at any real estate leased for use by the Station. To Seller's knowledge, there are no underground storage tanks on the premises of the Station. The transmission equipment of the Station does not contain PCBs. To Seller's knowledge, there is no asbestos on the premises of the Station.

**4.7 Taxes.** Seller has no knowledge of any pending tax investigations or pending tax audits against Seller pertaining to the Station.

**4.8 Disclaimer of Warranties.** Except for the foregoing representations and warranties specifically set forth in Section 4.1 through Section 4.7 of this Agreement, the Station

Assets are being transferred by Sellers to Buyer on an “as-is-where-is” basis without any representation or warranty, all other representations and warranties of any kind either expressed or implied, including warranties of fitness, being hereby expressly disclaimed.

## **Section 5**

### **Buyer’s Representations and Warranties**

Buyer represents and warrants to Seller as follows:

**5.1 Organization and Standing.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Buyer has all necessary corporate power and authority to own and operate the Station and carry on the business of the Station on and after the Closing Date

**5.2 Authorization and Binding Obligation.** Buyer has full corporate power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary corporate action on its part, including approval of the entire transaction by its board of directors and, if required, shareholders. This Agreement has been duly signed and delivered by Buyer and constitutes its valid and binding obligation enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**5.3 Absence of Conflicting Agreements or Required Consents.** Except for the required consent of the FCC, the execution, delivery and performance of this Agreement by Buyer (a) do not require the consent of any third party; (b) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; and (c) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, instrument, license, guaranty or permit to which Buyer is subject and which is material to the transactions contemplated hereby.

**5.4 Licensee Qualifications.** Buyer has no knowledge of any facts which would, under present law (including the Communications Act) and present rules, regulations and policies of the FCC, disqualify Buyer as an assignee of the FCC Authorizations, or as an owner and/or operator of the Station Assets. Buyer further represents and warrants that Buyer is financially qualified to meet all terms, conditions and undertakings contemplated by this Agreement on the Closing Date.

**5.5 Acknowledgement of “As-Is-Where-Is” Sale.** Buyer acknowledges and agrees that it is purchasing and accepting the Station Assets on an “as-is-where-is” basis, except for the representations and warranties specifically set forth in Section 4.1 through Section 4.7. To the fullest extent permitted by law, Buyer hereby unconditionally and irrevocably waives and releases any and all actual or potential claims that it might have against Sellers regarding any form of warranty, expressed or implied, of any kind or type, including warranties of fitness

relating to or in connection with the purchase of the Station Assets, other than the representations and warranties specifically set forth in Section 4.1 through Section 4.7.

**Section 6**  
**Covenants of Seller**

Between the date hereof and the Closing Date, except with the prior written consent of Buyer, and if the Seller's Station is operating on the date hereof, Seller shall conduct the business and operations of the Station in accordance with the following:

(a) **Affirmative Covenants of Certain Sellers.** Prior to the Closing, each Seller of an operating Station shall:

(1) Operate its Station in conformity in all material respects with all applicable laws, rules and regulations

(2) Maintain its Station Assets or replacements thereof consistent with customary repair, maintenance and condition, ordinary wear and tear excepted.

(3) Maintain its Station's books and records in accordance with normal business practices

(4) Conduct the business and operations of its Station in accordance in all material respects with the Communications Act, all applicable FCC rules and regulations, and any other applicable federal, state or local rules and regulations. Upon receipt of notice of violation of any such laws, rules and regulations, Seller will promptly notify Buyer of such notice and use its reasonable best efforts to contest in good faith or to cure such violation prior to the Closing Date

(5) Maintain in full force present casualty insurance policies, or their equivalent, on its Station and its Station Assets.

(6) Notify Buyer of (i) any material damage or destruction of any of its Station Assets; and (ii) any material adverse change in the condition of its Station.

(b) **Affirmative Covenant of All Sellers:** Prior to the Closing all Sellers shall:

(1) Cooperate with Buyer in filing with the FCC all applications and other documents required to be filed in connection with the transactions contemplated hereby and promptly furnish all such information as the FCC may request; and

(c) **Negative Covenants of All Sellers.** Prior to the closing Sellers shall not:

(1) Create, assume or permit to exist any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the Station Assets, except for those in existence on the date of this Agreement which shall be extinguished prior to on or the Closing Date

(2) Sell, assign, lease or otherwise transfer or dispose of any of the Station Assets except in the ordinary course.

(3) Waive any material right relating to the Station or the Station Assets.

(4) Take any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement.

## **Section 7**

### **Pre-Closing Covenants of Buyer**

Between the date hereof and the Closing Date, Buyer will:

(a) Cooperate with Sellers in filing with the FCC all applications and other documents required to be filed in connection with the transactions contemplated hereby and promptly furnish all such information as the FCC may request; and

(b) Not take, or fail to take, any action that would disqualify Buyer as an assignee of the FCC Authorizations, or as owner or operator of the Stations and the Station Assets.

## **Section 8**

### **Joint Covenants of Buyer and Sellers**

Buyer and Sellers each agree as follows:

**8.1 Conditions.** If any event should occur, either within or without the control of any party hereto, which would prevent fulfillment of the conditions upon the obligations of any party hereto to consummate the transactions contemplated by this Agreement, the parties hereto will use their reasonable best efforts to cure the event as expeditiously as possible, but this shall impose no monetary obligations on Seller or Buyer except as otherwise expressly provided herein

**8.2 Confidentiality.** Buyer and Seller each shall keep confidential all information obtained by it with respect to the other in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to the other, without retaining a copy thereof, any schedules, documents or other written information obtained from the other in connection with this Agreement and the transactions contemplated hereby.

**8.3 Cooperation.** The parties hereto shall cooperate fully with each other in taking any actions, including actions to obtain the required consent of any governmental instrumentality or any third party, necessary or helpful to accomplish the transactions contemplated by this Agreement

**8.4 Governmental Consents.** If the consent of any governmental instrumentality contains any condition, the party upon which such condition is imposed shall use its best good

faith efforts to comply therewith before the Closing Date; provided, however, that no party hereto shall be required hereunder to comply with any condition that would impose any monetary obligation not otherwise provided for herein or where compliance would be unduly burdensome or would have a material adverse effect upon it.

**8.5     Ensure Closing.**     Seller and Buyer each shall use its best efforts to ensure that the transactions contemplated hereby shall be consummated.

**8.6     Further Assurances.**     Seller and Buyer shall cooperate and take such actions, and execute such other documents, at Closing or subsequently, as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.

## **Section 9** **FCC Consent**

It is expressly understood and agreed that the assignments of the FCC Authorizations contemplated by this Agreement are subject to prior FCC Consent. No later than five (5) business days after the date of this Agreement, Buyer and Sellers shall file the FCC Applications. The parties shall prosecute the FCC Applications with all reasonable diligence and otherwise shall use their best efforts to obtain the grant of such applications as expeditiously as practicable. The assignments of the FCC Authorizations and all other Station Assets hereunder are expressly conditioned upon FCC Consent becoming a Final Order.

## **Section 10** **Adjustments and Prorations**

All income and expenses arising from the conduct of the business and operations of the Stations shall be prorated between Buyer and the respective Sellers in accordance with generally accepted accounting principles as of 12:01 a.m. on the date of Closing. Such prorations shall include, without limitation, all ad valorem and property taxes, music license fees, utility expenses, time sales agreements and advance payments thereunder, license fees, FCC regulatory fees and all other income and expenses attributable to the ownership and/or operation of the Stations. Prorations under this Section 10 shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement by certified check to the credited party's order within sixty (60) days after the Closing Date. If either Buyer or any Seller fails to timely pay any amount due within five (5) business days of the due date under this Agreement, such amount shall bear interest at a fluctuating rate equal to the Prime Rate plus two percent from the date such amount was due until the date such amount is paid.

## **Section 11** **Conditions Precedent to Buyer's Obligations**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which Buyer may waive in writing:



**11.1 Representations, Warranties and Covenants.** All representations and warranties of Seller made in this Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse and arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed

**11.2 FCC Consents.** The conditions specified in Section 9 of this Agreement shall have been satisfied and the FCC Consent shall have been granted with no requirement or condition materially adverse to Buyer arising from issues designated in EB Docket No. 03-152.

**11.3 FCC Authorizations.** There shall not have been any modification of any FCC Authorization which has a material adverse effect on any Station or the conduct of its business and operations. No proceeding shall be pending, the effect of which could be to revoke, cancel, fail to renew, suspend or modify materially and adversely any FCC Authorization or the assignment thereof to Buyer.

**11.4 Adverse Proceedings.** No suit, action or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, any Seller or the Buyer which would render it unlawful, as of the Closing Date, to effect the transaction contemplated by this Agreement in accordance with its terms. This Section 11.4 shall not be deemed to limit or expand Seller's representations in Section 4.3 hereof.

**11.5 Instruments of Conveyance and Transfer.** Sellers shall have delivered to Buyer all bills of sale, endorsements, assignments and other instruments of conveyance and transfer reasonably satisfactory in form and substance to counsel to Buyer, effecting the sale, transfer, assignment and conveyance of all right, title and interest of Sellers in and to their respective Station Assets to Buyer.

**11.6 Absence of Liens** All UCC-1 filings, tax liens and judgments pertaining to any of the Station Assets, shall have been terminated or extinguished, as the case may be, on or prior to the Closing Date, provided however, that the notice and cure provisions of Section 19.1 shall apply if Buyer discovers any such UCC-1 filings, tax liens or judgments that have not been terminated or extinguished, as the case may be, by the Closing Date.

## **Section 12**

### **Conditions Precedent to Seller's Obligations**

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which Sellers may waive in writing:

**12.1 Representations, Warranties and Covenants.** All representations and warranties of Buyer shall be true and complete in all material respects on and as of the Closing

Date as if made on and as of that date. All terms, covenants, and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

**12.2 FCC Consents.** The conditions specified in Section 9 of this Agreement shall have been satisfied.

**12.3 Adverse Proceedings.** No suit, action or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the Sellers or Buyer which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**12.4 Assumption of Obligations.** Buyer shall have delivered to Seller instruments reasonably satisfactory to counsel for Seller evidencing Buyer's assumption and agreement to pay, discharge and perform, in accordance with the terms of each, the obligations of Seller for the period following the Closing Date under the terms of the Authorizations and Leases transferred or assigned to Buyer pursuant to the terms hereof.

**12.5 Payment of Purchase Price.** Buyer shall have delivered to Sellers immediately available wire-transferred federal funds, as provided in Section 2.6.

### **Section 13** **Fees and Expenses**

Except as otherwise expressly provided herein, all expenses incurred in connection with this transaction shall be borne by the party incurring same. The filing fees for the FCC Applications shall be split equally between Sellers and Buyer

### **Section 14** **Commissions or Finder's Fee**

Each party represents and warrants to the other that no broker acted on its behalf, except for H B LaRue Media Brokers, whose fee shall be paid by Buyer. Each party shall indemnify and hold the other harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of a claim by any person or entity based on any such arrangement or agreement made or alleged to have been made by such party.

### **Section 15** **Risk of Loss**

The risk of any loss, damage or destruction to any of the Station Assets to be transferred hereunder from fire or other casualty shall be borne by the Seller of such Station Assets at all times prior to 12:01 a.m. on the date of Closing. Upon the occurrence of any loss or damage to any material property or assets to be transferred hereunder as a result of fire or other casualty prior to Closing, Seller shall promptly notify Buyer of same in writing, stating the extent of such loss or damage incurred, the cause thereof if known and the extent to which restoration, replacement and repair of the Station Assets lost or destroyed will be reimbursed under any

insurance policy with respect thereto. Seller shall promptly restore, replace or repair, if possible, any lost or destroyed property prior to the Closing Date, and Buyer and Seller agree that the Closing Date will be extended, if necessary, to accomplish restoration, replacement or repair of the Station Assets lost or destroyed prior to Closing; provided, however, that Seller shall have no obligation to repair, replace or restore damaged or lost Station Assets that are obsolete if no replacement asset is necessary or useful for the continued operation of the Station consistent with past practice. If the Station Assets cannot be substantially restored, replaced or repaired within thirty (30) days of the scheduled Closing Date, Buyer shall have the right to reduce the Purchase Price by the fair market value of such Station Assets prior to their loss or destruction as determined by an independent appraiser.

#### **Section 16** **Bulk Sales Law**

Buyer waives Sellers' compliance with the provisions of any bulk sales statute applicable to this transaction. Sellers shall indemnify and hold Buyer harmless against any cost or expense, including without limitation reasonable legal fees, incurred by Buyer as a result of the failure to comply with any such statute.

#### **Section 17** **Status of Employees**

Sellers shall be solely responsible for any and all liabilities and obligations Sellers may have to their respective employees, including, without limitation, compensation, severance pay, and accrued vacation time and sick leave. Buyer shall not be subject to any liability or obligation of an employer with respect to any Station employees unless and until actually hired by Buyer after the Closing Date.

#### **Section 18** **Termination Rights**

Without limiting the rights of the parties to terminate this Agreement as otherwise provided herein, Sellers and Buyer may terminate the Agreement if the terminating party(ies) is not then in material default under this Agreement, upon written notice to the others upon the occurrence of any of the following:

- (a) If the Closing has not been held within twelve (12) months of the date of this Agreement; or
- (b) A condition is imposed by the FCC or any other governmental authority, compliance with which would be unduly burdensome (for example, participation in a hearing designated by the FCC in connection with the application for FCC consent to assignment of the FCC Authorizations) or have a material adverse effect upon the party on which it is imposed;
- (c) The non-terminating party is in material default hereunder; or
- (d) If there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing.

## **Section 19**

### **Default**

**19.1 Seller's Breach.** In the event of a material breach by any Seller of its representations, warranties or obligations hereunder, prior to the Closing Date and not cured by the earlier of the Closing Date or within thirty (30) days after written notice to that effect from Buyer, and if Buyer shall not itself then be in default of the performance of its obligations or its warranties and representations hereunder, Buyer shall have the right to bring an action to enforce the terms of this Agreement by decree of specific performance, it being agreed that the Station Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Each Seller agrees to waive the defense in any such action for decree of specific performance that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

**19.2 Buyer's Breach.** In the event of a material breach by Buyer of its representations, warranties or obligations hereunder not cured by the earlier of the Closing Date or within 30 days after written notice to that effect from Sellers, and if Sellers shall not itself then be in default of the performance of its obligations or its warranties and representations hereunder, Sellers shall have the right to bring an action to enforce the terms of this Agreement by decree of specific performance, it being agreed that Seller(s) would likely be irreparably injured because the FCC revocation proceeding for the FCC Authorizations would be reinstated if the transactions contemplated by this Agreement are not consummated by the parties. In the alternative, Sellers shall collect \$150,000 from Buyer (whether by redemption of the letter of credit referenced in Section 2.4, or by immediate payment of \$150,000 from Buyer) and have the right to bring an action under law for damages, it being understood and agreed that if Sellers shall prevail against Buyer in such action, \$150,000 shall be deducted from the amount of damages paid to Sellers, if the damages awarded to Sellers exceed \$150,000.

**19.3 Survival of Seller's Representations and Warranties.** Seller's representations and warranties shall survive for a period of six (6) months from the Closing Date. Any and all actions under this Agreement must be brought within six (6) months from the Closing Date.

## **Section 20**

### **Indemnification**

**20.1 Seller's Indemnities.** Sellers shall indemnify, defend and hold harmless Buyer for a period of six (6) months from the Closing Date, promptly upon demand from and against any and all losses, cost, liability, claims, actions, damage and expense arising out of or in connection with a Third Party Claim referred to in Section 20.3 ("Losses"), including reasonable legal fees and other expenses incident thereto, asserting (a) the breach of any representation or warranty of Seller set forth in this Agreement or in any schedule or certificate delivered to Buyer pursuant hereto; (b) the breach of any of its covenants or other agreements contained in or arising out of this Agreement or the transactions contemplated hereby; or (c) a claim relating to the conduct of the business and operations of the Station and the Station Assets prior to 12:01 a.m. on the date of Closing which violate any warranty, representation, or covenant hereunder, including, without limitation, any taxes, assessments or similar charges relating to the operation

of the Station accrued or attributable to periods prior to the Closing Date, and any claims by Seller's employees arising out of their employment with Seller. Notwithstanding anything in this Agreement to the contrary, Sellers shall have no liability to Buyer under this Section 20 until Buyer's aggregate Losses exceed \$50,000, provided however, that once Buyer's Losses exceed \$50,000, Buyer shall be entitled to indemnification from Sellers for all such Losses.

**20.2 Buyer's Indemnities.** Buyer shall indemnify, defend and hold harmless Sellers for a period of six (6) months from the Closing Date, promptly upon demand, from and against any and all Losses, including reasonable legal fees and other expenses incident thereto, arising out of, or in connection with a Third Party Claim referred to in Section 20.3 asserting (a) the breach of any representation or warranty of Buyer set forth in this Agreement; (b) the breach of any of its covenants or other agreements contained in or arising out of this Agreement or the transactions contemplated hereby; or (c) a claim relating to the conduct of the business and the operation of the Station following 12:01 a.m. on the date of the Closing, which violate any warranty, representation or covenant hereunder. Notwithstanding anything in this Agreement to the contrary, Buyer shall have no liability to Sellers under this Section 20 until Sellers' aggregate Losses exceed \$50,000, provided however, that once Sellers' Losses exceed \$50,000, Sellers shall be entitled to indemnification from Buyer for all such Losses.

**20.3 Notice of Claim.** Buyer and each Seller, upon discovery of the breach of any of the representations, warranties and covenants of the other under this Agreement, shall give to the other prompt written notice of the discovery of such breach. If any action, suit or proceeding shall be commenced against Buyer or any Seller, as the case may be, in respect of which such party proposes to seek indemnification from the other under this Section 20 (a "Third-Party Claim"), then such party shall promptly notify the party from whom indemnification is sought (hereinafter the "Indemnifying Party") to that effect. The Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such Third-Party Claim, and the other party shall cooperate with all reasonable requests with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of a Third-Party Claim, the other party shall have the right to participate in the defense of such claim at its own expense. If a Third-Party Claim requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third-Party Claim, it shall be bound by the results obtained by the other party with respect to such Third-Party Claim.

## **Section 21**

### **Other Provisions**

**21.1 Attorney Fees.** Should Buyer or any Seller default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit for specific performance or other permitted remedy, the prevailing party in such lawsuit shall be entitled to reasonable attorneys' fees as shall be determined by the court.

**21.2 Successors and Assigns.** This Asset Purchase Agreement shall be binding upon, and inure to the benefit of the parties and the respective successors and assigns of the

parties. However, this Agreement may not be assigned by any party, either voluntarily or by operation of law, without the prior written consent of the other, which consent shall not be unreasonably withheld.

**21.3 Governing Law.** This Asset Purchase Agreement shall be governed, construed and enforced in accordance with the laws of the State of California, excluding the choice of law rules utilized in that jurisdiction.

**21.4 Notices.** Any notice, consent, waiver or other communication hereunder shall be sent by certified, express or registered mail, return receipt requested, postage prepaid, or overnight air courier service, to the address specified on Schedule 21.4. Notice shall be deemed to have been given three (3) business days after mailing if sent by registered or certified mail or on the next business day if sent by overnight air courier.

**21.5 Multiple Counterparts.** This Agreement may contain more than one counterpart of the signature page and this Agreement may be signed by the affixing of the signature of each party to one of such counterpart signature pages; all of such counterpart signature pages shall be read as though all of the signers had signed a single signature page.

**21.6 Entire Agreement.** This Agreement and the exhibits and schedules hereto represent the entire understanding of the parties hereto, supersedes all other and prior memoranda and agreements between the parties hereto, and may not be modified or amended, except by a written instrument signed by each of the parties hereto designating specifically the terms and provisions so modified and amended.

**21.7 Captions.** The section captions and headings in this Agreement are for convenience and reference purposes only and should not affect in any way the meaning or interpretation of this Agreement.

**21.8 Exclusive Dealings.** Prior to Closing, for so long as this Agreement remains in effect, neither Sellers nor any person acting on Sellers' behalf shall solicit or initiate any offer from, or conduct any negotiations with, any person concerning the acquisition of the Stations, directly or indirectly, by any party other than Buyer.

**21.9 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Sellers, Buyer, and their respective successors and permitted assignees, (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against any Sellers or Buyer.

**21.10 No Waiver.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of any party at any time to require performance by any other of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by another shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by either party for the performance of any obligation or act by the other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the day and year first above written.

*Remainder of page intentionally left blank Next pages are the signature pages.*

**SELLERS:**

\_\_\_\_\_  
WILLIAM L. ZAWILA

AVENAL EDUCATIONAL SERVICES, INC.

By: \_\_\_\_\_  
Name:  
Title:

CENTRAL VALLEY EDUCATIONAL  
SERVICES, INC.

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
H.L. CHARLES d/b/a FORD CITY  
BROADCASTING

LINDA WARE d/b/a LINDSAY  
BROADCASTING

By: \_\_\_\_\_  
Name: Cynthia Ramage  
Title: Executor of the Estate of  
Linda Ware



BUYER

LAZER BROADCASTING CORPORATION

By: \_\_\_\_\_  
Name: Alfredo Plascencia  
Title: President

**Schedule. 2.5**

**Purchase Prices**

<b>Seller/Licensee</b>	<b>Station</b>	<b>Purchase Price</b>
William L. Zawila	KNGS(FM) Coalinga, CA	\$300,000
Avenal Educational Services, Inc.	KAAX(FM) Avenal, CA	\$ 50,000
Central Valley Educational Services, Inc.	KAJP(FM) Firebaugh, CA	\$ 450,000
H L. Charles d/b/a Ford City Broadcasting	KZPE(FM) Ford City, CA	\$700,000
Linda Ware d/b/a Lindsay Broadcasting	KZPO(FM) Lindsay, CA	\$1,875,000

EXHIBIT B

## **DECLARATION OF ALFREDO PLASCENCIA**

My name is Alfredo Plascencia I am president, a director and 100 percent stockholder of Lazer Broadcasting Corporation ("Lazer"). Lazer, founded in 1993, is the licensee of the following California radio stations:

KSRN(FM), Kings Beach, Facility ID 34582

KBTW(FM), Lenwood, Facility ID 81804

KCAL(AM), Redlands, Facility ID 55416

KCZN(FM), Santa Paula, Facility ID 35925

KLMM(FM), Morro Bay, Facility ID 46401

KLUN(FM), Paso Robles, Facility ID 2243

KOXR(AM), Oxnard, Facility ID 866

KSBQ(AM), Santa Maria, Facility ID 38442

KXRS(FM), Hemet, Facility ID 36829

KXSB(FM), Big Bear Lake, Facility ID 43999

KZER(AM), Santa Barbara, Facility ID 29702

Additionally, I am president, a director and sole stockholder of KEXT Broadcasters, Inc., licensee of station KXLM(FM), Oxnard, California, Facility ID 34349 All of my stations broadcast in the Spanish language

I am a Mexican-American. I was born in the State of Zacatecas, Country of Mexico. in 1960, moved to the United States in 1972 and became a United States citizen in 1987

[Signature page attached]

**Signature Page to Declaration of Alfredo Plascencia**

I hereby declare under penalty of perjury under the laws of the United States that the foregoing information is based on my personal knowledge and is true and correct.

Signed and dated this 5th day of February, 2004.

A handwritten signature in black ink, appearing to be 'Alfredo Plascencia', written over a horizontal line.

Alfredo Plascencia

EXHIBIT C